

Report for Select Committee on Environment – 24th June 2008

Report of the Director of Adult, Community & Housing Services

Conditions of Tenancy

Purpose of Report

1. To make members of the Committee more aware of the conditions of tenancy and enforcement.

Background

2. When considering its workplan for 2008/09 members requested that a report on conditions of tenancy be presented to the first meeting of the municipal year. As a starting point it was requested that members were given an awareness of the conditions, processes and enforcement.

Conditions of Tenancy

3. It is the responsibility of a good landlord to make sure that its Tenancy Conditions are up to date, relevant and Human Rights Act compliant. The last time the Tenancy Conditions were updated in Dudley was 3rd April 2006. Being aware of legislative requirements and other directives it is considered that Dudley's Conditions of Tenancy are current and relevant.
4. There is a legal requirement as set out in Section 103 of the Housing Act 1985 on the consultation process that must be followed if a decision is taken to review the tenancy conditions in respect of secure tenants. The minimum required involves consultation with all of the Authority's secure tenants. As is common practice in Housing, the consultation process undertaken as part of the last review was much wider including internal and external partners. The final tenancy conditions also need the formal endorsement of Cabinet.
5. The process may be considered onerous but the very fact that consultation is a legislative requirement indicates the importance of this document. It is a legally binding document signed by the landlord (the Council) and the tenant(s).
6. For the purposes of this report it is intended to explore in more detail the three common Local Authority tenancies:
 - a. Secure,
 - b. Introductory,
 - c. Demoted.

Secure Tenancy (Terms & Conditions are included with this report)

7. Security of tenure was introduced by the Housing Act 1980 in the form of secure tenancies. The legislation considerably increased the rights of tenants e.g. the introduction of the right to buy, right of succession, but also increased their security in limiting the actions of the landlord (the Council). Section 82 states that a secure tenancy 'cannot be brought to an end by the landlord except by obtaining an order of the Court for the possession of the dwelling house'.
8. Further the Act lists the prescribed statutory grounds on which repossession of a secure tenancy can be requested. There were 16 grounds in the original legislation which has been amended to include a further two sub-grounds and a 'substituted' ground. The substitution of ground 2 covered 'nuisance and annoyance', the two new sub-grounds were domestic abuse and redevelopment schemes.
9. With regard to this report ground 1 is of most relevance, 'rent lawfully due from the tenant has not been paid or an obligation of the tenancy [ie. the conditions of tenancy] has been broken or not performed'. It should also be noted that in determining the course of action to take, ie. award repossession, the court may order possession only if it also considers it reasonable to do so. This involves a broader balancing exercise which takes into account all relevant circumstances. In "non-fault" ground cases the court may decide that suitable alternative accommodation is available to the tenant before it will make a possession order.
10. As is common in English law, decisions relating to Secure Tenancies are open to appeal (in some instances with leave to appeal to the House of Lords) and judicial review. In a growing number of cases decisions of the English courts are being challenged (with some success) in the European Court of Justice in Strasbourg on human rights principles. This has meant there is a tremendous amount of case law indicating what should and should not be seen as 'reasonable'. In some instances it will be the relevant case law that determines the progress of a case. An issue that caused considerable debate at the last review in Dudley was the proposal to take out of the agreement – no dogs in flats. Case law indicated that the presence of a dog in a flat, although a breach of the agreement, was insufficient to secure repossession. If, however, it could be proved that the animal was a nuisance, e.g. noise, fouling communal areas, then it may be considered reasonable if action was pursued.
11. As with any other Court process, the judge hears the evidence, preferably first hand through witnesses, and bases his decision on the evidence presented. There is provision for the use of hearsay evidence but this would only be allowed in unusual circumstances and at the discretion of the judge. Evidence is crucial to the process, although the ideal may be evidence as obtained by Housing staff or police, even actual convictions, most evidence does come from members of the community. This is why diary sheets are of such importance. If a case proceeds, the evidence contained within diary sheets becomes the basis of witness statements for use in court.
12. Assuming the ground for possession is made out and it is considered reasonable to make a possession order, the Court may:

"stay or suspend the execution of the order or postpone the date of possession for such periods as the Court thinks fit" and impose conditions, e.g. relating to repayment of rent or modifying behaviour.

For example, rather than make an immediate possession order (e.g. possession be given in 28 days), the court may make a postponed possession order which, in effect, gives the tenant another chance subject to his compliance with any conditions specified by the court.

13. Possession action can be a lengthy process. The usual process would be a series of warning letters, interviews, agreements prior to the service of a Notice of Seeking Possession (NoSP). The NoSP is the first stage of the legal process itself. As suggested by the title it advises the tenant(s) of the breach and gives them 28 days in which to remedy the breach, ie. clear rent arrears or modify behaviour. Only after 28 days have lapsed (not applicable in nuisance based cases) and the tenant remains in breach of the conditions can a case be entered into Court. In addition to the preparatory work there is also a minimum 4 week statutory period from when the case is entered into court to the first court hearing in respect of the case.
14. It is difficult when dealing with complex issues to generalise and in some cases there may be pre-hearings for directions and future Court days set aside for trials.
15. In any event once a case has been heard, the next decision is that of the judge. He could, for example, find in the favour of the tenant either based on the evidence or indeed insufficient evidence or failure of witnesses to attend. He could grant possession on a specified date (outright possession) or a postponed possession order which, in effect, gives the tenant the opportunity to keep his tenancy subject to his complying with any conditions the court imposes. Even after a possession order has been granted, an application must then be made for a warrant.
16. Attached as appendices 1, 2 and 3 to this report are three examples of legal action, one is for rent arrears and two for anti social behaviour. For the purposes of this report the intention is not to discuss the individual cases but to give an overall idea of timescales and processes.

Introductory (Terms & Conditions are included with this report)

17. Introductory Tenancies were introduced by the Housing Act 1996. Local Authorities were given a voluntary power by the legislation to adopt an Introductory Tenancy Scheme.
18. Under such a scheme all new tenants (not those transferring from one tenancy to another) are subject to an introductory or trial period of one year during which the Council may recover possession more easily than if the tenancy was secure. The legislation also gives the landlord the right to extend the trial period by 6 months.
19. Under an Introductory Tenancy certain legal rights attached to a Secure Tenancy do not apply, for example an Introductory Tenant does not have the 'right to buy', to take in lodgers or (in general) sub-let any part of the property.
20. If the tenancy conditions are adhered to during the 12 month (or 18 month if extended) trial period the tenancy automatically converts to a Secure Tenancy and

the tenant assumes the full legal rights attached to a Secure Tenancy.

21. Although it is easier to recover repossession of an Introductory Tenancy again, it should be noted that in accordance with Section 127(1) "The Landlord may only bring an Introductory Tenancy to an end by obtaining an order of the Court for possession of the dwelling house".
22. With Introductory Tenancies it is the discretion of the Court that is restricted. The legislation itself lays down the way the notice of proceedings are to be dealt with including a review process. Assuming that the legislation and processes are adhered to fully, the Court must give an order for possession.
23. With Introductory Tenancies the onus is on the Council to satisfy itself that if its decision is challenged as part of the legal internal review process, it has sufficient evidence to defend itself, e.g. evidence of non payment of rent or serious anti social behaviour.

Demoted Tenancies (see Appendix 4)

24. The Anti-Social Behaviour Act 2003 amended the Housing Act 1985 making provision for demotion of a tenancy because of anti-social behaviour.
25. The landlord, ie. the Council must obtain a court order to demote a tenancy. Section 82A (4) states:

"The Court must not make a demotion order unless it is satisfied [again stressing the need for proof in the form of evidence]

- a. that the tenant or a person residing in or visiting the dwelling house has engaged or has threatened to engage in conduct to which Section 153A or 153B of the Housing Act 1996 (anti-social behaviour or use of premises for unlawful purposes) applies, and
 - b. that it is reasonable to make the order".
26. Demoted tenancies are very similar to Introductory Tenancies in that there are less rights than are attached to a Secure Tenancy and less protection from eviction. The landlord can more easily evict if the problems that led to the demotion of the tenancy continue.
 27. A demotion order will be made for a 12 month period. If the tenant modifies his behaviour then at the conclusion of the order the tenancy automatically becomes

Statistical Data

28. The role of a public sector landlord is:
 - to protect its assets
 - to support the individual tenant(s) to sustain their tenancy
 - to have regard to the rights of the wider community

In most circumstances repossession action will only be considered when all other options have been explored. The ultimate outcome is that an individual/family will

lose their home.

29. It is appropriate here to provide some statistical data but it comes with a health warning. Legal enforcement must be viewed as a last resort when all other interventions have been explored and exhausted. This may, for example, include the involvement of debt advisors to regularise rent and arrears payments, the involvement of mediation or the Parenting Practitioner. The statistics here do not relate to the amount of time that is spent with families trying to resolve issues.

30. **Rent Arrears – April 07-March 08**

Secure Tenancies

Notices of Seeking Possession served = 2,364
Possession orders awarded by the Courts – 287
Evictions carried out = 68

Introductory – April 07-March 08

As at April 07 there were 1427 Introductory tenancies
Number of evictions 31

31. **Anti-social behaviour**

Secure/Introductory

Notices served	34
Possession orders	18
Anti-social behaviour orders	4
Anti-social behaviour injunction	1
Extension of introductory tenancy	1
Demoted tenancy	1

A further 18 possession orders were secured for breaches such as refusal to allow access for gas safety checks, trespassers, abandonment.

Finance

32. The Housing Revenue Account bears the cost of work relating to conditions of tenancy and enforcement action either directly or via an appropriate recharge.

Law

33. The Housing Act 1980 (as amended by the Housing Act 1985 and other acts) introduced security of tenure and the rights and responsibilities for both landlord and tenant. It further made consultation on any proposed changes to terms and conditions a statutory requirement.
34. The Housing Act 1996 introduced a voluntary power for Local Authorities to introduce Introductory Tenancies.
35. The Anti Social Behaviour Act 2003 amended the Housing Act 1985 making provision for demotion of a tenancy because of anti social behaviour.

Equality Impact

36. Although this report, in itself, does not have implications in respect of equality impact, actions taken in respect of breaching the tenancy condition must have regard to the individual/family and also the impact on the wider community.

Recommendation

37. It is recommended that:
- a. Members note the contents of the report.
 - b. Members determine if further reports are required or confirm that this report fulfils the requirement of the 2008/09 workplan.

A handwritten signature in black ink that reads "Linda Sanders." The signature is written in a cursive style with a large, looping initial 'L'.

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Linda Sanders
Director of Adult, Community & Housing Services

Contact Officer: Diane Channings
Telephone: 01384 815063
Email: diane.channings@dudley.gov.uk